IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

S.B.Civil Writ Petition No.1119/1998

Gopal Ram & Ors. vs. Shanker Lal & ors.

Date : 21.9.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.SL Jain, for the petitioners.

Mr.NS Acharya)
Mrs.RR Kanwar, Dy.GA) for the respondents.

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BY THE COURT :

REPORTABLE

Heard learned counsel for the parties.

This writ petition has been preferred against the judgment of the Board of Revenue dated 10.12.1997 by which the Board of Revenue has allowed the appeal preferred by respondent Shanker Lal and set aside the judgment and decree passed by the trial court dated 26.12.1990.

Brief facts of the case which came on the record

are that there were three co-sharers namely, Ghadsi Ram, Mansha Ram and Chunni Lal in the agriculture land of khasra no.202 measuring 56 bighas 19 biswas situated in Village Rohi of Circle Jaitpura of Tehsil Suratgarh. Ghadsi Ram sold his share in the property, which is 1/3rd, to defendant no.2 – Raji Ram s/o Chunni Lal. Plaintiff Mansha Ram impleaded his co-sharer Ghadsi Ram as party along with Raji Ram as defendant no.2 and also impleaded legal heirs of Chunni Lal as defendants no.3 to 6.

In the plaint, the plaintiff alleged that Mansha Ram had 1/3rd share, Raji Ram got 1/3rd share and the rest of the land is in the share of legal heirs of Chunni Lal. It is stated that because of the dispute between the plaintiff and defendants, the plaintiff wants to get his share determined and separated by meets and bounds. The suit was filed on 20.8.1987. the suit was decreed on the basis of consent written statement vide judgment and decree dated 26.12.1990.

Said judgment and decree dated 26.12.1990 was challenged by respondent Shanker Lal by preferring appeal before the Revenue Appellate Authority, Bikaner camp Sri Ganganagar. The contention of respondent Shanker Lal was that in fact, Chunni Lal sold his entire 1/3rd land vide registered sale deed dated 22.4.1958 to Shanker Lal. Since then respondent Shanker Lal is in possession of the property. It is alleged

that the plaintiff deliberately, without impleading Shanker Lal in the suit, obtained decree for partition of the property. In support of his plea, appellant Shanker Lal placed on record mutation no.125 opened on 20.11.1962 whereby the name of Shanker Lal was entered in the revenue record. Shanker Lal placed on record copies of Dhal Baanch of Samwat Years 2019, 2020 and 2022 to 2025 showing the entry of name of Shanker Lal for 1/3rd share in the property and to prove payment of land revenue deposited in the name of Shanker Lal.

The first appellate court observed that though the name of Shanker Lal was entered by mutation no.125 in the revenue record and in the revenue record, mutation order as well as in Dhal Baanch, the name of Shanker Lal is there but the said name was deleted by subsequent mutation no.168/169 dated 12.3.1986 and again name of original khatedar tenants Mansha Ram, Chunni Lal and Raji Ram were entered in the revenue record of samwat year 2042 (corresponding English year 1986). Therefore, the first appellate court held that Shanker Lal may file a separate suit for establishing his tenancy right in the property in dispute but in view of the fact that at the time of filing of the suit, the names of plaintiff and defendants were recorded in the revenue record, therefore, the suit filed against the defendants alone was maintainable. Therefore, in view of the above reasons, the appeal of

Shanker Lal was dismissed vide judgment and decree dated 20.11.1991.

Shanker Lal preferred second appeal before the Board of Revenue against the aforementioned two judgments. It was stated that once the name of Shanker Lal was entered in the revenue record, then that could have been cancelled by the order of competent authority and new mutation entry could have been opened in accordance with law by the order of the competent authority. The Board of Revenue also observed that when the property was transferred by registered sale deed, then the rights of the transferor stand extinguished with the registration of the document and, therefore, merely on the basis of any wrong entry obtained subsequently and by deletion of name of Shanker Lal, Shanker Lal's rights have not been affected in any manner. In view of the above, the Board of Revenue allowed the appeal and set aside the judgments and decrees of the trial court and appellate court.

Hence, the petitioners, successors of Chunni Lal, have preferred this writ petition.

According to learned counsel for the petitioners, Shanker Lal, without obtaining any leave to appeal, preferred appeal before the Revenue Appellate Authority despite the fact that he was not party in the suit. In view of the above, appeal of Shanker Lal was not

maintainable and should have been dismissed on this ground alone. It is further submitted that even the first appellate court has not granted any permission to prefer appeal which is apparent from the judgment of the first appellate court. However, since the first appeal of Shanker Lal was dismissed, therefore, he preferred second appeal but the Board of Revenue committed serious error of law in allowing the appeal of Shanker Lal. It is submitted that on the date of filing of the suit in the revenue record, the name of the plaintiff alone was there and the name of Shanker Lal was not recorded. It is submitted that it is settled law that the person whose name has not been recorded in the revenue record, can get his name entered in the revenue record by adopting proper procedure of law in mutation proceedings or by filing suit for declaration. In view of the above, Shanker Lal could have filed the suit for declaration as observed by the Revenue Appellate Authority in its judgment. It is also submitted that the entry made in the name of all co-sharers as mentioned in the plaint by mutation no.168/169 could alone have been relied upon by the trial court.

Learned counsel for the private respondent submitted that the fact of sale of land by deceased Chunni Lal by registered sale deed that too in the year

1958 had not been denied anywhere by any person – plaintiff or defendant. Not only this, there is no explanation from the petitioners that how the name of Shanker Lal, which was entered as back as in the year 1962 by opening mutation no.125 on 20.11.1962 was cancelled. Despite the finding recorded by the Board of Revenue, no order cancelling the mutation no.125 has been placed on record by the petitioners with this writ petition. It is submitted that even the first appellate court has not recorded any finding that mutation no.125 was wrong or illegal or was without any authority of law. In that view of the fact, the mutation no.168/169 could not have been recognised by the first appellate Court.

Learned counsel for the respondent vehemently submitted that the petitioners suppressed several relevant and material facts from the notice of this Court. According to the learned counsel for the respondent, even deletion of name of Shanker Lal was challenged by him by preferring appeal and in that appeal, learned District Collector vide order dated 27.7.1997 restored the mutation no.125 and declared that respondent Shanker Lal should be recorded as khatedar tenant.

Learned counsel for the respondent also pointed out that one of the successors of Chunni Lal submitted an application for becoming party in the mutation

proceedings before the Tehsildar, Suratgarh wherein Chunni Lal's successor's application was dismissed by the Tehsildar, Suratgarh vide order dated 12.12.1994. Against this, a revision no.10/95 was preferred by said Daya Ram before the Board of Revenue which was dismissed vide order dated 31.1.1997 and thereafter, District Collector passed the order dated 22.7.1997 restoring the mutation no.125 and ordered recording of name of Shanker Lal in the revenue record. It is submitted that the writ petition was preferred in the year 1998 but these facts have not been disclosed by the petitioners. The respondent also placed on record certain other documents.

I considered the submissions of learned counsel for the parties and perused the facts of the case.

This fact has not been disputed by the petitioners that a sale deed was executed by Chunni Lal on 22.4.1958 and this is a registered document and on the basis of this registered document, a mutation no.125 was opened on 20.11.1962, copy of which has been placed on record as Annex.R/1A wherein there is a clear reference of the sale deed dated 22.4.1958. It appears from the facts mentioned above itself that the mutation in the name of plaintiff and defendant was opened by mutation no.168/169 on 12.3.1986 and immediately

thereafter, on 20.8.1987, the plaintiff filed suit for partition. The time is very relevant for filing the suit after mutation dated 12.3.1986. There appears to no challenge of opening of mutation in the name of Shanker Lal for almost 24 years and the suit for partition was filed in only about 8 months after getting the name of Shanker Lal deleted from revenue record. Even after the judgment of the Board of Revenue, the petitioners could not place on record any order by which the mutation no.125 was set aside. The tenancy rights over agriculture land are heritable as well as transferable and the transfer can be effected by registered sale deed. With the execution of the registered sale deed, all the rights stand transferred in favour of transferee with effect from the date of execution of the sale. It is also settled law that merely revenue entries cannot create or extinguish any right, title or interest in the property nor revenue entries itself can extinguish any right, title or interest unless those entries are based on lawful order or passed by the competent authority. In view of the above, the petitioners miserably failed to explain the fact recorded by the Board of Revenue as to how the mutation order of 12.3.1986 could have been recognised. The entries made in revenue record are required to be continued till they are ordered to be changed by the order of the competent authority or only by the order

of the Court. Therefore, the mutation entry re-entering the name of the original khatedar – transferor was void. Apart from above, the mutation no.125 has already been restored by the order dated 22.7.1997 passed by the learned Collector in appeal.

Learned counsel for the petitioners also submitted that the first appellate court observed that Shanker Lal can file the suit for declaration of his rights and, therefore, the Board of Revenue should not have interfered in the judgment of the first appellate court. This argument is devoid of any force in view of the fact that undisputed fact came to the notice of the first appellate court which clearly demonstrates that the suit was filed after getting the revenue entry changed in the year 1986, then that suit on the face of it was a collusive suit and filed to affect the right of Shanker Lal. In view of the above, the appellate court should have dismissed the suit on the ground of non-joinder of necessary parties deliberately. It is also not the plea of the plaintiff or the petitioners that they had no knowledge of mutation no.125. In view of the above, the suit which was required to be dismissed at the time of inception when it was found that it is collusive, then the first appellate court should have exercised its jurisdiction to end the litigation and should not have found itself helpless in

such situation and should not have passed the order that Shanker Lal can file the suit for declaration of title so as to multiply the proceedings.

The contention of learned counsel for the petitioners that the appeal was preferred by Shanker Lal without obtaining leave cannot be allowed to be raised because that objection was not raised before the first appellate court or before the Board of Revenue. The facts demonstrate that the Court by implication granted permission to Shanker Lal to challenge the decree of the appellate court. Otherwise also, when it has been found that the decree under challenge may affect the right of person who was not party in the suit and appeal was entertained by the appellate court without specific prayer for leave to appeal and without specific order granting leave by appellate court then the appeal cannot be dismissed nor such judgment can be set aside merely on the basis of such technical objection.

In view of the above reasons, this writ petition, having no merits, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya